Paramjothi a/p Perumal & Anor v Letchimy a/p Samboo

HIGH COURT (SHAH ALAM) — APPEAL NO 12B-120–05 OF 2015
ZALITA ZAIDAN JC
30 APRIL 2018

Equity — Estoppel — Proprietary estoppel — Undertaking, promise and representation — First defendant verbally allowed and consented for plaintiff to stay on property — Plaintiff incurred expenses to build house and paid utility bills — Second defendant evicted plaintiff and ignored undertaking given by first defendant to plaintiff — Whether there arose equity or proprietary estoppel for plaintiff to have equitable rights on property

The respondent ('plaintiff') was a Malaysian citizen residing at No A1, Lot 1313, Jalan Pudu 25/127, 40400 Shah Alam, Selangor. The first and second appellants ('defendants') were Malaysian citizens residing at Lot 1313, C2, Jalan Pudu, Batu 8, Bukit Kemuning, 42450 Shah Alam, Selangor. The first defendant was the registered proprietor of a piece of property described as GM 963 Lot 1313 Mukim Klang as at 11 September 2011 ('the said lot'). The first defendant was the younger sister in law of the plaintiff, the sister to the plaintiff's husband while the second defendant was the son of the first defendant. The plaintiff claimed that prior to year 1997, the plaintiff, her husband and the first and second defendant's families lived in Kampung Sg Nipah, Batu Tiga, Shah Alam as one family. Relying on the undertaking, promise and representation of the first and second defendants, the plaintiff and her family at the end of year 1996, had cleared the said Lot and as many as 20 lorries had carried out earth filling on the said Lot B2 and C2 (before constructing the house). In the midst of that, the plaintiff's husband had passed on, on 21 January 1997 leaving the plaintiff who was a housewife to shoulder all the responsibility in managing the construction of the house at Lot B2 as planned by the plaintiff, first and second defendants. The plaintiff claimed that the first defendant had verbally allowed and consented for the plaintiff to stay in the said Lot B2 permanently and had asked the plaintiff to pay for the assessment and utilities bills of the said Lot B2. The plaintiff claimed that around 2009, the first defendant made the representation and promised with oral guarantee to transfer one per fifty sixth (1/56) part to the plaintiff that was the said Lot B2 but the plaintiff said then need not to as the first defendant had permitted and promised the plaintiff that the plaintiff may stay on Lot B2 forever for generations as the plaintiff had incurred the cost to build the house on Lot B2 and C2. The plaintiff claimed that the first defendant promised to be the trustee for the plaintiff in respect of Lot B2 as there was no monetary contribution from the first defendant towards the construction costs of the house at Lots B2 and C2. On 12 September 2011, the first defendant had

colluded with the second defendant, transferred the title of the Lot with the house from the first defendant to the second defendant, without the plaintiff's knowledge and with the intention to defraud and/or cheat the plaintiff. On 1 April 2013, the second defendant evicted the plaintiff from Lot B2 and ignored the undertaking given by the first defendant to the plaintiff. The plaintiff averred that by evicting the plaintiff from the said Lot B2, the first and second defendants had breached their contractual obligation and also had breached the trust. The plaintiff claimed that she suffered losses and through her solicitor's letter, demanded from the first and second defendants and they failed and/or refused to pay the plaintiff. On 13 May 2015 the learned judge of sessions court Shah Alam had granted judgment against the first and second defendants and hence this appeal. The issue for consideration was whether there arose equity or proprietary estoppel for the plaintiff to have the equitable rights on the said Lot B2.

Held, dismissing the appeal with costs:

(1) The plaintiff had relied on the representation, promise and oral guarantee of the first defendant where the plaintiff incurred all the expenses to build the house and paid the utility bills while living on Lot B2. The reliance of the plaintiff on the representation, promise and guarantee made by the first defendant was within the knowledge of the second defendant who was also the material witness for the first defendant. From the time the representation, promise and guarantee made by the first defendant up till 24 October 2011 upon the second defendant reaching the majority age of 18 years old, the second defendant had all along knew of the plaintiff's reliance and interests on Lot B2. Indeed the plaintiff expanded money on the said property of the first defendant which then became the property of the second defendant under the representation, promise and guarantee by the first defendant that the plaintiff would be able to live and remain there to which raised an equity. The plaintiff had the right over Lot B2 in equity (see paras 20, 22 & 24).

(2) The defendants were estopped from going against the representation, promise and guarantee orally made to the plaintiff. The principle on estoppel enunciated in the case of *Kerajaan Malaysia v Mohd Mokhtar bin Ali* [1995] 4 MLJ 601 had been satisfied in the instant appeal. As the plaintiff had been evicted from the house, the plaintiff was entitled to compensation based on the principles of equity and proprietary estoppel. There was representation made by the first defendant with the intention of inducing the plaintiff to the extent of altering her position by using all of her late husband's money due to the plaintiff's reliance on the first defendant's representation, promise and oral guarantee (see paras 31–32).

[Bahasa Malaysia summary

Responden ('plaintif') adalah warganegara Malaysia yang tinggal di No A1, Lot 1313, Jalan Pudu 25/127, 40400 Shah Alam, Selangor. Perayu pertama dan kedua ('defendan') adalah warganegara Malaysia yang tinggal di Lot 1313, C2, Jalan Pudu, Batu 8, Bukit Kemuning, 42450 Shah Alam, Selangor. Defendan pertama adalah pemilik berdaftar satu hartanah yang digambarkan sebagai GM 963 Lot 1313 Mukim Klang pada 11 September 2011 ('lot tersebut'). Defendan pertama adalah adik ipar perempuan kepada plaintif, adik perempuan kepada suami plaintif manakala defendan kedua adalah anak kepada defendan pertama. Plaintif mendakwa bahawa sebelum tahun 1997, plaintif, suaminya dan keluarga defendan pertama dan kedua tinggal di Kampung Sg Nipah, Batu Tiga, Shah Alam sebagai satu keluarga. Bergantung pada akujanji, janji dan perwakilan terdakwa pertama dan kedua, plaintif dan keluarganya pada akhir tahun 1996, telah membersihkan Lot tersebut dan sebanyak 20 lori telah melaksanakan pengisian tanah di atas Lot B2 dan C2 tersebut (sebelum membina rumah). Di pertengahan itu, suami plaintif telah meninggal dunia, pada 21 Januari 1997 meninggalkan plaintif yang merupakan seorang suri rumah untuk menanggung semua tanggungjawab dalam menguruskan pembinaan rumah di Lot B2 seperti yang dirancang oleh plaintif, defendan pertama dan kedua. Plaintif mendakwa bahawa defendan pertama telah membenarkan secara lisan dan bersetuju dengan plaintif untuk tinggal di Lot B2 tersebut selama-lamanya dan telah meminta plaintif untuk membayar cukai pintu dan bil utiliti Lot B2 tersebut. Plaintif mendakwa bahawa sepanjang tahun 2009, defendan pertama membuat perwakilan dan berjanji dengan jaminan lisan untuk memindahkan satu per lima puluh enam (1/56) kepada plaintif yang dikatakan Lot B2 tersebut tetapi plaintif ketika itu berkata tidak perlu kerana defendan pertama telah membenarkan dan berjanji kepada plaintif bahawa plaintif boleh tinggal di Lot B2 selama-lamanya turun-temurun kerana plaintif telah menanggung kos untuk membina rumah di Lot B2 dan C2. Plaintif mendakwa bahawa defendan pertama berjanji untuk menjadi pemegang amanah bagi plaintif berkenaan dengan Lot B2 kerana tiada sumbangan kewangan dari defendan pertama ke atas kos pembinaan rumah di Lot B2 dan C2. Pada 12 September 2011, defendan pertama telah berpakat dengan defendan kedua, memindahkan hakmilik Lot dengan rumah dari defendan pertama kepada defendan kedua, tanpa pengetahuan plaintif dan dengan niat untuk memperdaya dan/atau menipu plaintif. Pada 1 April 2013, defendan kedua menghalau plaintif dari Lot B2 dan tidak mengendahkan akujanji yang diberikan oleh defendan pertama kepada plaintif. Plaintif menegaskan bahawa dengan menghalau plaintif dari Lot B2 tersebut, defendan pertama dan kedua telah melanggar kewajipan kontraktual mereka dan juga melanggar amanah itu. Plaintif mendakwa bahawa dia mengalami kerugian dan melalui surat peguamnya, menuntut dari defendan pertama dan kedua dan mereka gagal dan/atau enggan membayar plaintif. Pada 13 Mei 2015, hakim Mahkamah Sesyen Shah Alam yang

bijaksana telah memberikan penghakiman terhadap defendan pertama dan kedua dan oleh itu rayuan ini. Isu untuk pertimbangan adalah sama ada wujud ekuiti atau hak milik estoppel bagi plaintif untuk mempunyai hak ekuiti di Lot B2 tersebut.

Diputuskan, menolak rayuan dengan kos:

(1) Plaintif telah bergantung pada perwakilan, janji dan jaminan lisan defendan pertama di mana plaintif menanggung semua perbelanjaan untuk membina rumah dan membayar bil-bil utiliti semasa tinggal di Lot B2. Kebergantungan plaintif mengenai perwakilan, janji dan jaminan yang dibuat oleh defendan pertama adalah dalam pengetahuan defendan kedua yang juga merupakan saksi material untuk defendan pertama. Dari masa perwakilan tersebut, janji dan jaminan yang dibuat oleh defendan pertama sehingga 24 Oktober 2011 apabila defendan kedua mencapai usia majoriti 18 tahun, defendan kedua telah mengetahui ketergantungan dan kepentingan plaintif terhadap Lot B2. Sesungguhnya plaintif telah memperluaskan wang ke atas harta defendan pertama tersebut yang kemudiannya menjadi harta defendan kedua di bawah perwakilan, janji dan jaminan oleh defendan pertama bahawa plaintif akan dapat hidup dan kekal di sana telah menimbulkan ekuiti. Plaintif mempunyai hak ke atas Lot B2 dalam ekuiti (lihat perenggan 20, 22 & 24).

(2) Defendan telah diestop daripada menentang perwakilan, janji dan jaminan secara lisan yang dibuat kepada plaintif. Prinsip mengenai estopel yang dikemukakan dalam kes *Kerajaan Malaysia v Mohd Mokhtar bin Ali* [1995] 4 MLJ 601 telah dipenuhi dalam rayuan ini. Oleh kerana plaintif telah dihalau dari rumah, plaintif berhak mendapat pampasan berdasarkan prinsip-prinsip ekuiti dan hak milik estoppel. Terdapat perwakilan yang dibuat oleh defendan pertama dengan niat untuk mendorong plaintif sehingga mengubah kedudukannya dengan menggunakan semua wang suaminya yang telah meninggal kerana kebergantungan plaintif terhadap perwakilan, janji dan jaminan mulut defendan pertama (lihat perenggan 31–32).]

Notes

For cases on proprietary estoppel, see 6(3) *Mallal's Digest* (5th Ed, 2015) paras 3101–3103.

Cases referred to

Bradbury and others v Taylor and another [2012] EWCA Civ 1208, CA (refd)
Cheng Hang Guan & Ors v Perumahan Farlim (Penang) Sdn Bhd & Ors [1993] 3 MLJ 352, HC (refd)
Inwards and others v Baker [1965] 2 QB 29, CA (consd)
Kerajaan Malaysia v Mohd Mokhtar bin Ali [1995] 4 MLJ 601, HC (refd)

Leha binte Jusoh v Awang Johari bin Hashim [1978] 1 MLJ 202, FC (refd)
Letchumanan Chettiar Alagappan @ L Allagappan (as executor to SL Alameloo Achi alias Sona Lena Alamelo Acho, deceased) & Anor v Secure Plantation Sdn Bhd [2017] 4 MLJ 697, FC (refd)
Ng Mei Kheng v JB Securities Sdn Bhd [1998] MLJU 75, HC (refd)
Samar binte Mansor v Mustafa Kamarul Ariffin [1974] 2 MLJ 71, FC (refd)
Singma Sawmill Co Sdn Bhd v Asian Holdings (Industrialised Buildings) Sdn Bhd [1980] 1 MLJ 21, FC (refd)
Sivapragasam s/o Nagamany v Amaravathy d/o V Nadeson & Puvaneswary d/o AS Lingam [2001] MLJU 715; [2001] 8 CLJ 706, HC (refd)
Tan Hee Juan by his next friend Tan See Bok v Teh Boon Keat; Lai Soon [1934] 1 MLJ 96 (refd)

Legislation referred to

Age of Majority Act 1971 s 2
Contracts Act 1950 s 11
Evidence Act 1950 s 101

Ramanathan Velu (Nur Syafiqah bt Abdullah with him) (Rama Velu & Assoc) for the second appellant.
K Krishnan (Krish & Kiew) for the respondent.

Zalita Zaidan JC:

INTRODUCTION

[1] This appeal arose from the decision of the sessions court which dismissed the appellant's (defendant) on 13 May 2015 that allowed the respondent's (plaintiff) claims.

[2] For ease of reference, in this judgment, the parties will be referred to as they were in the sessions court. At times, I refer 'the first and second defendants' as 'the defendants' and individually as 'the first defendant' and 'the second defendant'.

[3] I dismiss the appeal with costs. My grounds of judgment follows.

BACKGROUND FACTS

[4] The essential facts underlying the plaintiff's case as elucidated by the learned session judge can be summarised as follows:

(a) the plaintiff is a Malaysian citizen residing at No A1, Lot 1313, Jalan Pudu 25/127, 40400 Shah Alam, Selangor;

(b) the first defendant is a Malaysian citizen residing at Lot 1313, C2, Jalan Pudu, Batu 8, Bukit Kemuning, 42450 Shah Alam, Selangor;

(c) the second defendant is a Malaysian citizen residing at Lot 1313, C2, Jalan Pudu, Batu 8, Bukit Kemuning, 42450 Shah Alam, Selangor;

(d) the first defendant is the registered proprietor of a piece of property (1/56) described as GM 963 Lot 1313 Mukim Klang as at 11 September 2011 ('the said lot');

(e) the first defendant is the younger sister in law of the plaintiff, the sister to the plaintiff's husband, whose plaintiff's husband is Munusamy a/l Perumal;

(f) the plaintiff claimed that prior to year 1997, the plaintiff, her husband and the first and second defendant's families lived in Kampung Sg Nipah, Batu Tiga, Shah Alam as one family. They were close and live happily as relatives;

(g) relying on the undertaking, promise and representation of the first and second defendants, the plaintiff and her family at the end of year 1996, had cleared the said lot and as many as 20 lorries had carried out earth filling on the said Lot B2 and C2 (before constructing the house) and the total earth filling cost is RM4,000 (RM200 per day for each lorry);

(h) in the midst of that, the plaintiff's husband named Munusamy a/l Perumai had passed on, on 21 January 1997 leaving the plaintiff who is a housewife to shoulder all the responsibility in managing the construction of the house at Lot B2 as planned by the plaintiff, first and second defendants;

(i) the construction works had commenced in the late year 1997 and completed in 1998 and the plaintiff stated that as a housewife, she had to shoulder the responsibility in managing the construction work of the said house;

(j) the plaintiff claimed that the first defendant had verbally allowed and consented for the plaintiff to stay in the said Lot B2 permanently and had asked the plaintiff to pay for the assessment and utilities bills of the said Lot B2. The plaintiff claimed that around 2009, the first defendant made the representation and promised with oral guarantee to transfer one per fifty sixth (1/56) part to the plaintiff that is Lot B2 (the said Lot B2) but the plaintiff said then need not to as the first defendant had permitted and promised the plaintiff that the plaintiff may stay on Lot B2 forever for generations as the plaintiff had incurred the cost of RM88,000 to build the house on Lot B2 and C2;

(k) the plaintiff claimed that the first defendant promised to the plaintiff that she may stay till the end of her life and the first defendant will be the

trustee for the plaintiff in respect of Lot B2 as there was no monetary contribution from the first defendant towards the construction costs of the house at Lot B2 and C2;

(l) the plaintiff claimed that the second defendant is the son of the first defendant who is in possession of all the information and knowledge of the dealings between the plaintiff and the first defendant where the plaintiff had used her monies for the construction of the double storey house at the said lot (the said house);

(m) on 12 September, 2011, the first defendant had colluded with the second defendant, transferred the title of the lot with the house from the first defendant to the second defendant who is the son of the first defendant, without the plaintiff's knowledge and with the intention to defraud and/or cheat the plaintiff. Following from the said transfer, the second defendant had taken out a summons against the plaintiff to evict her from the said Lot B2;

(n) on 1 April 2013, the second defendant evicted the plaintiff from Lot B2 and ignored the undertaking given by the first defendant to the plaintiff, which took place during the discussion in constructing the semi-detached house on the Lot B2. As a result of the said eviction, the plaintiff had incurred moving out cost of RM600 being the transportation by using lorries from Lot B2 to another place on the said day and had to pay for labour charges of RM210 for seven workers. The plaintiff avers that by evicting the plaintiff from the said Lot B2, the first and second defendants have breached their contractual obligation and also have breached the trust;

(o) specifically, the plaintiff claims that by evicting the plaintiff from Lot B2 (p 11 of appeal record), the first and second defendants have:

(i) breached the oral agreement allowing the plaintiff to stay in the said Lot B2;

(ii) both the first and second defendants had cunningly colluded and had committed conspiracy to the detriment of the plaintiff as their victim;

(iii) breach of fiduciary duty;

(iv) breach of duty of constructive trust; and

(v) breach of fraudulent trust;

(p) the plaintiff claimed that she suffered losses amounting to RM198,410 which are particularised in her statement of claim (para 23 of statement of claim, p 12 of appeal record) and through her solicitor's letter,

demanded on 17 May 2013 from the first and second defendants and to date the first and second defendants failed and/ or refused to pay the plaintiff;

(q) notwithstanding, on 13 May 2015, the learned judge of Sessions Court, Shah Alam had granted judgment against the first and second defendants. The first and second defendants not satisfied with the judgment dated 13 May 2015, filed a notice of appeal dated 18 May 2015 against the judgment in this High Court; and

(r) on 21 June 2016, the second defendant was declared a bankrupt upon the application made by the plaintiff at High Court Shah Alam vide Bankruptcy Suit No 29NCC-6442–07 of 2015.

THE DEFENDANTS' CASE

[5] Learned counsel for the second defendant's advanced several grounds as stated in the memorandum of appeal contained at pp 98–104 of the appeal record, however, averred that only one ground of appeal will be submitted as its main ground. The main ground of appeal is whether the session judge in granting the plaintiff the judgment on 13 May 2015, was proper and in accordance with the law, as to whether it could be entered against a person who have allegedly made representation, undertaking an oral guarantee when the person was only 11 years old.

[6] The defendants' counsel argued that the judgment dated 13 May 2015 granted against the second defendant was void ab initio as the representation, undertaking and oral guarantee allegedly made by the second defendant in 1996 was when he was 11 years old.

[7] To support the averment, the defendants' counsel submitted relying on the laws, firstly on s 11 of the Contracts Act 1950 which states that:

> Every person is competent to contract who is of the age of majority according to the law to which he is subject, and who is of sound mind, and is not disqualified from contraction by any law to which he is subject.

The defendants' counsel relied on the Age of Majority Act 1971 where s 2 enacts that the minority of all males and females shall cease and determine within Malaysia at the age of 18 years as the age of majority.

[8] The defendants' counsel relied on the case *Ng Mei Kheng v JB Securities Sdn Bhd* [1998] MLJU 75 which referred to s 11 of the Contracts Act 1950 and s 2 of the Age of Majority Act 1971 and the Federal Court case of *Leha binte Jusoh v Awang Johari bin Hashim* [1978] 1 MLJ 202 and the Privy Council case of *Tan Hee Juan by his next friend Tan See Bok v Teh Boon Keat; Lai*

Soon [1934] 1 MLJ 96.

THE PLAINTIFF'S CASE

[9] Learned counsel for the plaintiff submitted three areas centered to the main ground of appeal as to whether the claim against the second defendant could be enforced. The plaintiff's counsel submitted that it is trite law that the court should be slow to disturb the findings of fact of the trial judge based on the authority of *Samar binte Mansor v Mustafa Kamarul Ariffin* [1974] 2 MLJ 71.

[10] The counsel for the plaintiff argued that this court does not assist the defendants who come before this court with unclean hands and pointed to the case submitted by the defendants, *Singma Sawmill Co Sdn Bhd v Asian Holdings (Industrialised Buildings) Sdn Bhd* [1980] 1 MLJ 21 where the Federal Court held that the courts do not assist a person who comes with unclean hands. The plaintiff's counsel submitted the background of plaintiff's claim where prior to 1997, the first and second defendants sought the plaintiff's and plaintiff's husband's financial assistance to build the house where in return the defendants made representation and promised and guaranteed that the plaintiff and her family shall live and owned part of Lot B2 of the house.

[11] The plaintiff's counsel submitted that the first defendant had permitted and allowed the plaintiff verbally to live for generations and directed the plaintiff to pay the levy and utility bills for lot B2 which strengthened the plaintiff's claim on the Lot B2 in equity. The plaintiff's counsel relied on the case of *Sivapragasam s/o Nagamany v Amaravathy d/o V Nadeson & Puvaneswary d/o AS Lingam* [2001] MLJU 715; [2001] 8 CLJ 706 which decided that:

(1) To say that an oral agreement cannot be enforced is a totally misconceived proposition of law. Quite clearly an oral agreement comes within the short compass of an Order 81(1)(a) of the Rules of High Court 1980 so long as the agreement is not nebulous in terms of its subject matter, price or condition.

(2) Specific performance is an equitable relief given by the court to enforce against the defendant the duty of doing what he agreed by contract.

[12] In relation to the third area, the counsel for the plaintiff submitted that there was an undertaking, oral guarantee and representation between the plaintiff and first defendant that binds in equity the Lot B2 of the first and second defendants. The plaintiff's counsel submitted that there is proprietary estoppel and an estoppel characterised as promissory estoppel that binds the plaintiff and the first defendant against the second defendant's said property.

[13] The plaintiff's counsel submitted that the first defendant made representation, promised and orally guaranteed to transfer 1/56 of the first defendant's property to the plaintiff so that the plaintiff can have the interests of Lot B2 which the plaintiff had said need not to possess as the first defendant had permitted and promised the plaintiff to stay Lot B2 forever and for generations and that the first defendant promised will be the trustee for the plaintiff for Lot B2. Based on the first defendant's representation, promise and oral guarantee, it is submitted that the first and second defendants are estopped to deny the plaintiff' rights and interests on Lot B2. The plaintiff's counsel relied on a number of cases on the doctrine of estoppel.

[14] In the case of *Kerajaan Malaysia v Mohd Mokhtar bin Ali* [1995] 4 MLJ 601, it is submitted that the principle on estoppel is enunciated:

> (2) Estoppel by representation must be founded upon the following conditions:
>
> (a) there must be a representation made with the intention of inducing a person to alter his position or in short there must be a holding out; and
>
> (b) the person to whom the representation was made must have relied on it to alter his position or in short there must be reliance. The representation, which may be either by conduct or statement, must be clear and unambiguous and intended to be acted upon.

[15] The plaintiff's counsel also pointed to the testimony of the plaintiff which proves to show that the plaintiff had incurred all the expenses where the money received and spent on the house was from her late husband's savings, insurance and bank account.

[16] It was also submitted that the age of the second defendant is irrelevant as the trial judge had considered all facts and evidence in finding and deciding that the first defendant had represented, promised and guaranteed the plaintiff to which the plaintiff had relied and used her money and energy to build the house and therefore the first and second defendants should be estopped from evicting the plaintiff. It is submitted that as the plaintiff had been evicted from the house, she is entitled to compensation and damages based on equity or estoppel based on equity.

APPEAL

[17] After perusing the appeal record, the written judgment of the session judge and considering the written and oral submissions of learned counsels for the defendants and the plaintiff, I dismissed the appeal with costs. This suit was brought by the plaintiff who bears the burden to prove following s 101 of the Evidence Act 1950 and the Federal Court case of *Letchumanan Chettiar Alagappan @ L Allagappan (as executor to SL Alameloo Achi alias Sona Lena*

Alamelo Acho, deceased) & Anor v Secure Plantation Sdn Bhd [2017] 4 MLJ 697.

[18] The heart of the matter is whether there arose equity or proprietary estoppel for the plaintiff to have the equitable rights on the said Lot B2. This is considering the plaintiff's claims and the representation, promise and oral guarantee made by the first defendant and the second defendant who, the latter, was 11 years old at the time.

[19] Based on the material facts, the plaintiff had borne the expenses to build the house on Lot B2 and C2. It was not disputed that the plaintiff had to bear the cost of building the house and paid for the levy and utility bills of the house. This is further corroborated by the copies of receipts and utility bills made by the plaintiff.

[20] I cannot deny that the evidence adduced overridingly shows that the plaintiff had relied on the representation, promise and oral guarantee of the first defendant where the plaintiff incurred all the expenses to build the house and paid the utility bills while living on Lot B2. By relying on the representation, promise and guarantee of the first defendant, the plaintiff spent her late husband's money to build the house on Lot B2 owned by first defendant which could have been built on her own piece of land.

[21] The money spent by the plaintiff was the money received from her late husband's KWSP, Indah Water Konsortium, Perkeso and United Oriental Insurance Bhd and the plaintiff called her witnesses from the said organisations (p 265 of appeal record (1)) to testify and all the material documents including proof by recipients were exhibited at the trial.

[22] Furthermore, the first and second defendants did not evict the plaintiff prior to year 2011 until the second defendant filed the originating summons of 24 October 2011 to evict the plaintiff. This court is of the view that the reliance of the plaintiff on the representation, promise and guarantee made by the first defendant is within the knowledge of the second defendant who is also the material witness for the first defendant. It is this court's observation that from the time the representation, promise and guarantee made by the first defendant up till 24 October 2011 upon the second defendant reaching the majority age of 18 years old, the second defendant had all along knew of the plaintiff's reliance and interests on Lot B2.

[23] In addition, upon careful perusal of the notes of evidence, there was discrepancy found in the oral evidence of the defendants' witnesses as to the money claimed obtained from the bank but they were not sure of the month and no documentary evidence to prove the defendants as recipient could be

produced at the trial (pp 705, 707 and 710 of appeal record (2)). The burden to prove by the plaintiff had been successfully discharged and remained with the defendants.

[24] Indeed the plaintiff expanded money on the said property of the first defendant which then became the property of the second defendant under the representation, promise and guarantee by the first defendant that the plaintiff will be able to live and remain there to which raises an equity. This court holds the view that the plaintiff has the right over Lot B2 in equity.

[25] The law on equity derived from the English common law can be found on a number of authorities. This court referred to the Supreme Court case of *Cheng Hang Guan & Ors v Perumahan Farlim (Penang) Sdn Bhd & Ors* [1993] 3 MLJ 352 attributed by the plaintiff's counsel where it was held that there was an equity or an equitable estoppel protecting the defendant in his occupation for more than 30 years. In *Cheng Hang Guan & Ors* case, the plaintiffs being farmers and the tenants of the Khoo Kongsi's land, claimed proprietary estoppel based on the expenditure of money by one of the plaintiffs on the Khoo Kongsi's land, who is also the trustee, in the expectation or belief, encouraged by the trustee, that the plaintiffs could stay on the land and carry out farming activities as long as they wished, provided that they paid rent (at p 406) (p 55 of Tab 11 of plaintiff's bundle of authorities).

[26] The English cases referred in *Cheng Hang Guan & Ors* case, Edgar Joseph Jr, Supreme Court judge (as he then was) elaborated on the principle of equity and categories of estoppel which includes proprietary estoppel. I will not delve much, suffice to deliberate on one English case with the principles enunciated and as followed by our courts. In the English case of *Inwards and others v Baker* [1965] 2 QB 29 where the facts of that case is almost similar to the present case, the English Court of Appeal held that despite the legal title being in the plaintiffs, the son had an equity to remain in the bungalow 'as long as he desired to use it as his home'. Judge Dakwerts LJ observed that the equity protects the son so that an injustice may not be perpetrated.

[27] In *Inwards and others v Baker* case, Mr Baker allowed his son Jack to build a house on his land where Jack worked on the house with the help of one or two labourers and Mr Baker helped him with 150 pounds. Upon the completion of the house, Jack lived in the house. Mr Baker died in 1951 without mentioning the house built by Jack and Mr Baker's wife was appointed as executrix and her children as trustees. Although the trustees acknowledged Jack's right to stay in the house, the trustees brought an action to evict Jack.

[28] The Court of Appeal in *Inwards and others v Baker* case held that equity on expenditure in the land should not fail merely because of Jack's interest to be

secured was not expressly indicated. It was held that the court must look at the circumstances in order to determine how equity can be satisfied. In the words of Lord Denning MR:

> ... if the owner of land requests another, or indeed allows another, to expend money on the land under an expectation created or encouraged by the landlord that he will be able to remain there, that raises an equity in the licensee such as to entitle him to stay. He has a licence coupled with an equity ... even though there is no binding contract to grant any particular interest to the licensee, nevertheless the court can look at their circumstances and see whether there is an equity arising out of the expenditure of money. All that is necessary is that the licensee should, at the request or with the encouragement of the landlord, have spent the money in the expectation of being allowed to stay there ...

[29] Accordingly, this court may give relief to the person who has incurred the expenditure on another's land by giving him or her an equitable lien on the property for the expenditure. In a more recent English case of *Bradbury and others v Taylor and another* [2012] EWCA Civ 1208, that case regarding a young couple who had uprooted themselves from Sheffield and moved to Cornwall to look after an elderly relative relying on a promise that the elderly would leave them his house and land. The trial judge was found by the Court of Appeal as not wrong in evaluating that there was representation of detrimental reliance by the young couple. Although the young couple lived rent free in the large house of the elderly who then died of cancer, the move by the young couple and having to live apart and the travelling expenses incurred, all the activities and support by the young couple were taken into consideration by the trial judge. The trial judge remarked that it would be unconscionable for the promise or assurance not to be kept even if there was not initially a legally binding agreement.

[30] The principle of proprietary estoppel expounded in the Supreme Court case of *Cheng Hang Guan & Ors* held that proprietary estoppel is one of the exceptions to the general rule that a person who spends money on improving the property of another has no right to claim reimbursement or any proprietary interest in the property.

[31] Based on the facts and evidence before this court, rightly, the defendants are estopped from going against the representation, promise and guarantee orally made to the plaintiff. This court finds that the principle on estoppel enunciated in the case of *Kerajaan Malaysia v Mohd Mokhtar bin Ali* as attributed by the plaintiff's counsel had been satisfied in this instant appeal.

[32] This court viewed that as the plaintiff had been evicted from the house, the plaintiff is entitled to compensation based on the principles of equity and proprietary estoppel. This court also finds that the session judge had evaluated

all the facts and evidence (pp 85–89 and pp 90–96 of appeal record) and made findings of fact that there was representation made by the first defendant with the intention of inducing the plaintiff to the extent of altering her position by using all of her late husband's money due to plaintiff's reliance on the first defendant's representation, promise and oral guarantee. The session judge was not wrong in law in disallowing the prayers of the plaintiff for items (b), (c), (d) and (f) of para 25 of statement of claim (p 97 of appeal record).

In light of the above reasons, I dismiss the appeal with costs.

Appeal dismissed with costs.

Reported by Ahmad Ismail Illman Mohd Razali